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Plaintiffs and the Putative Class*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUNHONG YIM, JAIME OLARTE, and JOSE
ACUNA individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

CAREY LIMOUSINE NY, INC. and CAREY
INTERNATIONAL, INC.

Defendants.

Case No.: 14-cv-05883

**NOTICE OF MOTION AND
UNOPPOSED MOTION TO AMEND
MOTION FOR PRELIMINARY
APPROVAL**

NOTICE OF MOTION AND MOTION
TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the parties are scheduled to attend a hearing on the motion for preliminary approval on October 2, 2015, at 9:30 a.m. E.S.T., with Magistrate Judge Orenstein. Plaintiffs request leave to amend their Unopposed Motion for Preliminary Approval of Class Action Settlement, based on the amended settlement agreement between the parties. Specifically, the parties' settlement initially preconditioned receipt of an enhancement upon agreement to the settlement. The parties have since become aware of *Radcliffe v. Experian Info.*, 715 F.3d 1157, 1159 (9th Cir. 2013), holding that "conditional incentive awards caused the interests of the class representatives to diverge from the interests of the class because the settlement agreement told class representatives that they would not receive incentive awards unless they supported the settlement." While this matter is distinguishable from *Radcliffe*, which in any event has not been embraced by the Second Circuit, in an abundance of caution, the parties have made very minor amendments to the settlement to ensure that receipt of an incentive award is not conditioned on support of the settlement – *i.e.*, as amended, one may participate in the settlement, object, and still receive an incentive, with the Court's approval. Those Plaintiffs who agree to the settlement and sign a broader release will receive an additional enhancement, as consideration for their broader release. *Henry v. Little Mint, Inc.*, No. 12 Civ. 3996 CM, 2014 WL 2199427, at *11 (S.D.N.Y. May 23, 2014) (approving service awards to named Plaintiffs who, *inter alia*, executed a broader release than the other class members)

Accordingly, Plaintiffs request that the Court hear the motion for preliminary approval of the settlement, as amended, at the currently-scheduled date and time.

Dated: September 25, 2015

BRYAN SCHWARTZ LAW

By: /s/ Bryan J. Schwartz
Bryan J. Schwartz (SBN 209903)

*Attorney for Individual and Representative
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